



General Assembly

Distr.
GENERAL

A/48/584
16 November 1993

ORIGINAL: ENGLISH

Forty-eighth session
Agenda item 114 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS
OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Afghanistan

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Afghanistan prepared by Mr. Felix Ermacora, Special Rapporteur of the Commission on Human Rights, in accordance with Commission on Human Rights resolution 1993/66 of 10 March 1993, and Economic and Social Council decision 1993/275 of 28 July 1993.

ANNEX

Interim report on the situation of human rights in Afghanistan
prepared by the Special Rapporteur of the Commission on Human
Rights in accordance with Commission resolution 1993/66 and
Economic and Social Council decision 1993/275

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1 - 14	3
II. OUTLINE OF THE GENERAL SITUATION IN AFGHANISTAN	15 - 38	5
A. Events in Afghanistan since the submission of the previous report	15 - 25	5
B. Human rights problems in the light of the political and territorial structure of the country	26 - 32	7
C. The international community and human rights in Afghanistan	33 - 38	8
III. PROBLEM OF REFUGEES AND DISPLACED PERSONS	39 - 53	9
IV. CIVIL AND POLITICAL RIGHTS	54 - 91	13
A. Legal and factual framework	54 - 55	13
B. Right to life and deliberate killing	56 - 64	13
C. Personal liberty and the administration of justice	65 - 73	16
D. Freedom of expression	74	17
E. Other human rights issues, including the rights of women	75 - 91	18
V. ECONOMIC, SOCIAL AND CULTURAL RIGHTS	92 - 95	21
VI. SELF-DETERMINATION	96 - 101	22
VII. CONCLUSIONS AND RECOMMENDATIONS	102 - 142	23
A. Conclusions	102 - 127	23
B. Recommendations	128 - 142	27

I. INTRODUCTION

1. The Special Rapporteur was first appointed to examine the human rights situation in Afghanistan in 1984 by the Chairman of the Commission on Human Rights, who had been requested to do so by the Economic and Social Council in its resolution 1984/37 of 24 May 1984. Since then, his mandate has been renewed regularly by the Commission, in resolutions endorsed by the Council, in which the Special Rapporteur was requested to report to the Commission and to the General Assembly. So far, he has submitted nine reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/24, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25, E/CN.4/1991/31, E/CN.4/1992/33 and E/CN.4/1993/42) and eight to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669, A/45/664, A/46/606 and A/47/656).

2. At its forty-ninth session, the Commission on Human Rights decided, by its resolution 1993/66 of 10 March 1993, to extend the mandate of the Special Rapporteur for one year, an extension which was confirmed by the Economic and Social Council in its decision 1993/275 of 28 July 1993.

3. At its forty-seventh session, after considering the report submitted to it by the Special Rapporteur, the General Assembly, by its resolution 47/141 of 18 December 1992, decided to keep under consideration, during its forty-eighth session, the situation of human rights in Afghanistan in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

4. Subsequent to the renewal of his mandate by the Commission on Human Rights at its forty-ninth session, and in accordance with past practice, the Special Rapporteur again visited the area in order to obtain the most broadly-based information possible. He visited Pakistan on 13, 17, 18 and 20 September and Afghanistan on 14, 15, 16 and 19 September 1993.

5. Accordingly, the Special Rapporteur has the honour to submit his interim report to the General Assembly in compliance with Commission on Human Rights resolution 1993/66 and General Assembly resolution 47/141; the report was finalized on 28 October 1993.

6. During his visit to Pakistan, following the established schedule, the Special Rapporteur was received by representatives of the Ministry for Foreign Affairs and by the Chief Commissioner for Afghan Refugees. While in Islamabad, he also met with the Ambassador of Afghanistan, with whom he exchanged views on the overall situation in the country. In addition, the Special Rapporteur had talks with representatives of various humanitarian organizations.

7. In the North West Frontier Province, the Special Rapporteur visited a refugee settlement at Hayatabad, near Peshawar, where he spoke with persons who had fled Kabul during the heavy rocketing in 1992, and those who fled the city recently. He also visited the ISRA Mental Health Centre and the Afghan Disabled Society. While in Peshawar, the Special Rapporteur met the former President of Afghanistan and head of the Afghan National Liberation Front (ANLF), Mr. Sibghatullah Mojaddidi, the head of the Hezbe Islami (Khalis) political party, Maulavi Younis Khalis, and the representatives of the Council of

Nangarhar Province, Haji Baryalai and Mr. Said Elyas, with whom he exchanged views on the overall situation in the country. He also had talks with representatives of various humanitarian and other non-governmental organizations based in Peshawar, and with private individuals.

8. During his visit to Afghanistan, the Special Rapporteur was received, in accordance with the programme established in consultation with the Afghan authorities, by the President of Afghanistan, the First Deputy Prime Minister, the Minister for Refugee and Repatriates Affairs, the Minister for Frontier Affairs, the Minister of Finance, the Deputy Ministers for Foreign Affairs, the Deputy Minister of Justice and the Director for National Security. He also held informal talks with the Minister for Health. On his way to Afghanistan, the Special Rapporteur met with the Minister for Foreign Affairs in London.

9. In Kabul, the Special Rapporteur met representatives of the Afghan judiciary, including the Deputy Attorney-General, the Secretary and members of the Supreme Court, and the head and members of the Advisory Board of the Supreme Court. He also met the Mayor of Kabul, the head of the National Islamic Front of Afghanistan (NIFA), Pir Sayed Ahmed Gailani, the former Minister for Defence, Mr. Ahmad Shah Massoud, representatives of humanitarian organizations, and a number of private individuals.

10. While in Kabul, the Special Rapporteur visited the 400-bed Military Medical Academy Hospital. He also met representatives of the Afghan Red Crescent Society and the Afghan Women's Association. In addition, the Special Rapporteur visited the Saray Shah Zada area of Kabul, where he met members of the Afghan Sikh and Hindu communities, and the southern part of the city, in particular the area of the university, which was subjected to particularly heavy rocketing and artillery fire in 1992.

11. In Herat Province, the Special Rapporteur visited the city of Herat where he met the Governor, Mr. Ismail Khan, and visited the mass grave discovered in 1992 near that city. He also interviewed Afghan returnees from the Islamic Republic of Iran.

12. The Special Rapporteur wishes once again to express his sincere appreciation to the governmental authorities of Afghanistan and Pakistan and the provincial authorities of the area he visited in Afghanistan for the valuable assistance and full cooperation that they extended to him. In this respect, he once again wishes to thank the Office of the Secretary-General in Afghanistan and Pakistan, the Office for the Coordination of Humanitarian Assistance to Afghanistan, and the United Nations Development Programme (UNDP) for their most efficient logistical assistance, without which those visits would not have been possible.

13. For the purpose of drafting the present report in the most impartial and objective manner possible, in addition to gathering information during the visits to Pakistan and Afghanistan, the Special Rapporteur followed the course of events throughout the period covered, namely from March to October 1993, and systematically evaluated written and oral information relevant to his mandate received from various individuals and organizations. He has also consulted various reports prepared by United Nations bodies and specialized agencies, as

well as those by non-governmental organizations which deal with the human rights and humanitarian aspects of the Afghan issue.

14. Section II of the present report provides an outline of the general situation in Afghanistan; and human rights problems are examined in the light of the prevailing political situation. Section III deals with the problem of refugees and displaced persons. In sections IV and V, civil and political rights and economic, social and cultural rights, respectively, are considered. The question of self-determination is examined in section VI. Section VII contains the conclusions and recommendations which the Special Rapporteur has drawn from the analysis of the available information.

II. OUTLINE OF THE GENERAL SITUATION IN AFGHANISTAN

A. Events in Afghanistan since the submission of the previous report

15. In his last report to the General Assembly (A/47/656), the Special Rapporteur referred to his visit to Afghanistan in September 1992 and the political events which had taken place there up to that date. In his last report to the Commission on Human Rights, in February 1993 (E/CN.4/1993/42), the Special Rapporteur described the situation of human rights in Afghanistan from September 1992 to February 1993, and set out the findings of his visit to the region in January/February 1993.

16. The Special Rapporteur is of the opinion that human rights reflect and are conditioned by the political situation in a given country. He believes, therefore, that it is necessary to provide a brief outline of the political developments which have taken place in Afghanistan in order to arrive at a better understanding of the human rights issues at stake.

17. On 29 December 1992, the Shura-Ahl-e-Hal Wa Aqd (Council for the solving of problems and making of agreements) was held in Kabul. Of the 1,336 delegates expected to participate, 230 did not attend, and the leaders of five of the nine political parties also boycotted the shura. Mr. Rabbani, the head of the Jamiat Islami political party, was the only candidate for the position of State president. He was elected by 916 votes in favour to 59 against. In his report to the Commission on Human Rights, the Special Rapporteur described the circumstances in which the shura was held (E/CN.4/1993/42, paras. 41-47). In spite of the widespread opposition to it, the shura became a political fact.

18. To solve the problems engendered by the contested shura, the representatives of the political parties which did not participate in its deliberations met in January 1993 at Jalalabad, the capital of Nangarhar Province, and issued a four-point declaration. In addition, various Afghan political factions presented alternative proposals aimed at solving the political crisis (see E/CN.4/1993/42, annexes I to IV).

19. None of those proposals could be implemented, however, and the existing political tensions were not reduced. The different political parties therefore accepted the initiative of King Fahd of Saudi Arabia and decided to meet at Islamabad. In addition to Saudi Arabia and the good offices of

Mr. Muhammad Nawaz Sharif, Prime Minister of Pakistan, the Islamic Republic of Iran supported the initiative and sent a special envoy to the conciliation talks. On 7 March 1993, a 10-point Afghan Peace Accord, to which was annexed a document entitled "Division of Powers", was adopted at Islamabad (for the texts, see S/25435).

20. The aforementioned political documents indicate that all the parties and groups concerned had agreed, inter alia, to the formation of a government for a period of 18 months, in which Mr. Burhanuddin Rabbani would remain President and Mr. Gulbuddin Hekmatyar or his nominee would assume the office of Prime Minister. A cabinet would be formed within two weeks of the signing of the Accord.

21. An independent Election Commission would be formed to hold elections for a Grand Constituent Assembly within eight months from the date of signature of the Accord. The Assembly would formulate a Constitution under which general elections for the President and the Parliament would be held within the 18-month period beginning on 29 December 1992. In addition, the Accord stipulated that a Defence Council would be set up and that all Afghan detainees held by the Government and different parties during the armed hostilities would be immediately and unconditionally released. Public and private buildings and properties occupied by different armed groups would be returned to their original owners. An all-party committee would be constituted to control the monetary system. A committee would also be set up to supervise the distribution of food and other essential commodities. A joint commission would supervise the cease-fire and cessation of hostilities.

22. The "Division of Powers" stipulated that the Prime Minister would form the Cabinet, which would work on the principle of collective responsibility. Differences would be resolved through discussion. The document also set out in detail the powers of the President and the Prime Minister. With regard to human rights, the President would have the power to commute and pardon sentences in accordance with the Shariah (Islamic law), and the Prime Minister could adopt measures to ensure public order, peace, security and Islamic morality, and to ensure the administration of justice by an independent and impartial judiciary.

23. As the implementation of the Afghan Peace Accord proved difficult, the leaders of the Afghan political parties met once again at Jalalabad between 30 April and 17 May 1993, reportedly under a certain amount of pressure to arrive at a concrete solution. They concluded and signed an accord in which, inter alia, a certain number of ministerial portfolios were distributed. However, the leaders of ANLF and NIFA did not sign a document containing a number of the decisions taken because they alleged that it violated human rights by imposing the veil on women. It was decided that during the two months following the signing of the Accord, the President would look after the Ministry of Defence while the Prime Minister would be in charge of the Ministry of the Interior. On 19 May, the party leaders decided that posts and privileges awarded during the communist regime would be revoked. Numerous persons who did not occupy high-ranking positions in the previous Government and were not accused of committing crimes have nevertheless kept their jobs in the current administrative apparatus, both in Kabul and in the provinces.

24. The Accord concluded at Jalalabad contains the Charter of the Supreme Council of the Islamic State of Afghanistan, whose role appears to be to provide guidelines concerning the daily conduct of political affairs. The Accord also provides for the establishment of an Election Commission and sets out its Charter (see para. 100 below).

25. Mr. Gulbuddin Hekmatyar was sworn in as Prime Minister on 17 April 1993. He announced the formation of his Government the same month from Charasiab, a village located 25 kilometres from Kabul.

B. Human rights problems in the light of the political and territorial structure of the country

26. Despite the formation of an Islamic Government, the rivalry between the groups whose leaders or members are ministers in the coalition Government has continued and their differences have not been resolved through negotiation, as envisaged in the Islamabad and Jalalabad accords. The fighting in Kabul is mainly between the Hezbe Wahadat and Ittehad Islami forces and remains constant. In the beginning, the most serious fighting took place between the Shurae Nazar (composed of forces belonging to the Jamiat political party headed by President Rabbani and the party of Ahmad Shah Massoud, former Minister for Defence) and Hezbe Islami (Hekmatyar) headed by Prime Minister Hekmatyar. The mayor of Kabul informed the Special Rapporteur that, during the past year, approximately 36,000 houses were partly or fully destroyed while more than 30,000 were damaged as a result of this conflict. A representative of the Afghan Red Crescent Society said that it is estimated that 10,000 persons have been killed during the same period. Even in the past few months, approximately 100 persons have been killed in rocket attacks.

27. The present situation is such that the Prime Minister is reportedly unable to enter the capital, while the President is said to be unable to leave it beyond a radius of one kilometre. In a news interview, Prime Minister Hekmatyar recently stated: "I must say that Kabul has been divided into 12 independent zones, with specific 'Berlin Walls'". (The Frontier Post, 19 September 1993)

28. This "coalition" arrangement, whose principal feature is rivalry, is not automatically reflected in the governmental structure of the provinces. It would appear that the party structure is either non-existent or that the parties are grouped into different shuras (councils). The western part of the country, comprising areas which once made up the greater Herat Province, is governed by Ismail Khan, who became a prominent mujahid commander in the Herat area after leading the mutiny of the 17th Division of the Afghan army.

29. A number of provinces in the northern part of the country are governed by Abdul Rashid Dostom, a former militia leader, who was promoted to the rank of general by former President Mojjadidi. Recently he has had to face the conflict in neighbouring Tajikistan, whose effects have spilled over into Afghanistan. (For additional details, see S/26145 and S/26241.)

30. The eastern part of Afghanistan, in particular Nangarhar Province, is ruled by Governor Haji Abdul Qadeer, who heads a coalition of parties comprising the Nangarhar shura and the area was peaceful until February 1993. The first sign

of unrest was the ambush and killing of three members of United Nations personnel near the capital, Jalalabad, which the Special Rapporteur had visited the previous day.

31. The discord among the members of the shura was further accentuated at the beginning of September 1993 when the Deputy Governor of Nangarhar Province, Haji Shamali Khan, his brother and six of his associates were assassinated in Jalalabad. More than 80 persons are alleged to have been killed in the ensuing armed conflict, which began in the area of Sarobi on 10 October 1993 between the local Hezbe Islami commander and the forces of the Nangarhar shura. According to Le Monde of 16 October 1993, it has resulted in more than 100 deaths, principally among civilians, while several hundred persons were wounded.

32. Kandahar Province, in south-eastern Afghanistan, is also not free from conflict resulting from party rivalries. The particularity of the situation is that the rivalry between the two parties in conflict is not necessarily reflected in other parts of the country where their forces are present. Fighting has also taken place in Helmand Province and on 27 September 1993 in the north of the country. Only a few provinces are calm and more or less safe. Political problems in Afghanistan are solved partly through peaceful discussion, and partly by the use of arms which are spread throughout the country, and the latent unrest may erupt at any time.

C. The international community and human rights in Afghanistan

33. In spite of the decreasing interest of the world in Afghan affairs, United Nations bodies and non-governmental organizations are doing their utmost within the limits of their possibilities to help the population of Afghanistan, Afghan refugees and the country as a whole. Among the best sources of information on the assistance provided by the United Nations are the weekly reports published by the Office for the Coordination of Humanitarian Assistance to Afghanistan. They contain a survey of humanitarian operations carried out in different provinces, including efforts with regard to voluntary repatriation, the assistance given to Tajik refugees in Afghanistan, mine clearance, and pledges concerning contributions to the programme. The considerable discrepancy between the requirements and the resources actually available is clearly illustrated by the response to the consolidated appeal for emergency humanitarian assistance for Afghanistan launched in January 1993: of US\$ 138.1 million requested for life-sustaining sectors, only \$47 million were pledged by the end of September.

34. The Agency Coordinating Body for Afghan Relief (ACBAR) publishes information on the assistance provided to Afghanistan by non-governmental organizations in its news summaries, which also contain information about the political developments in the area.

35. In examining the situation of human rights in Afghanistan, the Special Rapporteur must take into account the fact that the country was subjected to foreign intervention for more than 11 years. The armed conflict continued after the withdrawal of Soviet troops and the demise of the former Government and the taking of power by the former opposition forces. The ensuing power struggle, which has been waged by distinctly undemocratic means, has become a pattern of behaviour and has had a disastrous effect on the situation of human rights.

36. Afghanistan is a party to various international human rights instruments, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also a party to the Geneva Conventions. The human rights and humanitarian standards contained therein have always served as a parameter for the Special Rapporteur when assessing the situation of human rights prevailing in the country. The human rights principles contained in the Koran, and the relevant provisions of the Islamabad and Jalalabad accords, must also be taken into consideration.

37. The power struggle currently taking place in many parts of Afghanistan, in Kabul in particular, cannot be considered to be a ijihad (holy war) and call to arms against invading infidels that used to be the major unifying factor for the different tribal, ethnic and religious groupings. The present conflict is not international in character under the Geneva Conventions and the motivations for a holy war have been replaced by jealousies and rivalry between parties or armed groups.

38. Among the issues considered in the ensuing section is the unprecedented scale of repatriation of Afghan refugees during 1992, which has declined dramatically in 1993. The fate and current situation of refugees continues to remain a human rights problem, which is compounded by the growing number of persons displaced inside Afghanistan. The enjoyment of civil and political rights continues to be one of the principal human rights problems. Additional problems are the disastrous economic situation in the wake of the war against occupation forces and the current power struggle, as well as the millions of mines scattered throughout the country. The power struggle also has a bearing on the question of self-determination, which was at the centre of the war against the occupation forces.

III. PROBLEM OF REFUGEES AND DISPLACED PERSONS

39. As indicated in the Special Rapporteur's report to the Commission on Human Rights (E/CN.4/1993/42) and in the report on the repatriation of Afghan refugees, 1992, prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR) and dated 1 March 1993, 1.3 million Afghan refugees had returned to their country from Pakistan since April 1992.

40. In contrast to 1992 and despite initial forecasts for an equally massive repatriation movement in 1993, only about 300,000 Afghan refugees had returned to their country from Pakistan by September 1993, bringing the total number of returnees from Pakistan from April 1992 to September 1993 to 1.6 million persons. Since the beginning on 1 December 1992 of the assistance programme for Afghan refugees returning from the Islamic Republic of Iran, some 300,000 persons have returned. In addition to UNHCR, the World Food Programme (WFP) and the Governments of Pakistan and the Islamic Republic of Iran have assisted with the repatriation programme.

41. Although more than 120 administrative units in refugee camps have been closed and housing units destroyed for operational reasons in the North West Frontier and Baluchistan provinces of Pakistan, some 2 million Afghan refugees still remain in that country, 1.7 million of whom are registered.

42. On 21 October 1992, an agreement for the repatriation of Afghan refugees in the Islamic Republic of Iran was concluded between UNHCR and the Governments of the Islamic Republic of Afghanistan and the Islamic Republic of Iran. A similar agreement was concluded between UNHCR and the Governments of Afghanistan and Pakistan on 17 August 1993. In the preambles to those agreements, reference is made, *inter alia*, to the right of all citizens to leave and to return to their country of origin as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The agreements resulted in the establishment of Tripartite Commissions with the respective Governments, with the objective of facilitating the safe, orderly and voluntary repatriation of refugees and their successful reintegration in Afghanistan. Article 7 of the agreements outlines the human rights principles that are to guide the Commissions in their work.

43. The repatriation of Afghan refugees from Pakistan decreased dramatically in 1993, and there was also a reverse movement. Approximately 96,000 new refugees have come to Pakistan since April 1992, mostly from urban areas and principally as a result of the turmoil in Kabul. It is estimated that 20 to 25 per cent of the new refugees are those who had returned to Afghanistan in 1992. The Special Rapporteur was able to interview a number of them in September 1993, at Hayatabad, near Peshawar. They were living in shelters with no electricity, water, doors or at times even roofs, in unsanitary conditions, which have generated skin disorders and stomach and kidney problems, especially among children. Of the 600 to 700 families living there, only some 10 to 15 had ration booklets. They were also harassed by the local police. The reasons invoked by the new arrivals and by refugees who are reluctant to return are the absence of a stable and effective government, lack of security, the absence of an economic structure and activities, rocketing, destruction of their homes, the threat of rape and murder, corruption, the existence of extensive minefields, and the general lack of a congenial social environment.

44. During his last visit to Afghanistan, the Special Rapporteur was able to observe the destruction in both villages and cities. He visited the western part of Herat which has been razed. Extensive destruction has also taken place in a number of neighbourhoods in Kabul, such as the area of the university, the Silo area, Mirwais Maidan, Afshar, Karte Sé, Karte Char, Karte Nau, Kote Sangi and Khair Khana. He was also able to observe the destruction of agricultural land in the countryside around Jalalabad.

45. In addition to refugees, it is estimated that approximately one third of Afghanistan's population is displaced internally, and that between 100,000 and 600,000 persons left Kabul in 1992. During his visits to Afghanistan in September 1992 and January/February 1993, the Special Rapporteur visited camps for displaced persons near Jalalabad and spoke to displaced persons at Mazar-i-Sharif. They told him of their suffering and anxieties, and how little assistance they were receiving. Many were eyewitnesses to looting, killing and even rape, which were additional reasons for persons to become refugees or internally displaced. Some 35,000 persons fled from Faryab to Badghis Province

in September 1993 because of clashes between armed groups. In addition, it is estimated that some 7,000 Afghan families living near the border with Tajikistan had fled to Taloqan as a result of the conflict in that country.

46. Numerous refugees who were civil servants under the former Government have sought asylum in European countries but have encountered difficulties in obtaining it. In this connection, the Special Rapporteur would like to quote an opinion expressed in the report published by Amnesty International in September 1993 entitled "Afghanistan: Political Crisis and the Refugees" (AI INDEX: ASA 11/01/93):

"Amnesty International believes that under the present circumstances the majority of Afghan asylum-seekers could become the target of serious human rights violations if returned to Afghanistan. ... An undated decree issued by the present Afghan President, Burhanuddin Rabbani, gives assurances that Afghans who have taken permanent or temporary residence abroad up to 23 April 1993 are entitled to obtain visas from the Afghan Consulates in their country of residence and will be allowed to visit Afghanistan as and when they wish. They will be entitled to an exit visa on arrival 'providing no unlawful act has been committed'. The decree does not specify what constitutes an 'unlawful act' which, in view of the disagreement between the Kabul Government's President and Prime Minister over the extent to which the Islamic law should override the criminal code, could be interpreted arbitrarily."

47. World public opinion has manifested a certain interest in the fate of members of the Sikh and Hindu communities which had settled in Afghanistan several centuries ago. At the time of the Special Rapporteur's visit to Kabul in September 1993, it was reported that 70 per cent of Sikh and Hindu families had left the city in 1992 because of intensive rocket attacks, looting and a general lack of security. Racial, ethnic or religious discrimination has not been cited as a reason for leaving. The heads of approximately half of the families which left in 1992 had reportedly returned to assess the security situation. The members of the Sikh and Hindu communities with whom the Special Rapporteur spoke expressed the wish that the Embassy of India in Kabul should be reopened. They stated that no women belonging to those communities were raped.

48. The Special Rapporteur's attention has been drawn to a specific problem concerning the situation of Afghan refugees in the Islamic Republic of Iran, namely, the forcible repatriation of thousands of persons which began in April 1993 but has intensified since June. Of the approximately 8,000 persons who crossed the border into Afghanistan in August, some 10 per cent are reported to have been deported, 570 of them on two consecutive days. Ninety-five per cent of the forcible departures were from Khorasan Province, from which 300 Afghan families were deported in July. The Special Rapporteur discussed the problem with the Minister for Refugee and Repatriates Affairs of Afghanistan.

49. During his visit to Herat, the Special Rapporteur heard a number of witnesses who provided him with detailed information on the circumstances of their deportation from the Islamic Republic of Iran. Men were often picked up in the street, at their place of work or from buses. Their identity cards would be confiscated or torn up on the spot, thereby depriving them of the

authorization to reside in the country. Some were transferred immediately to the border while others were detained. A number of persons were forced to pay exorbitant taxes, abandon their profession or leave their businesses and homes. Pressure on Afghan refugees has also been exercised by cutting off their water and electricity supplies.

50. Additional problems faced recently by returning refugees in the north of Afghanistan were harassment and robbery. Armed men would ask for money and fuel. In a number of incidents in September and October 1993, refugees were caught in armed conflicts opposing regional forces which would simply confiscate the lorries to transport ammunition and food. Other refugees were forced to transport ammunition when they refused to get off the lorry. Medical or other assistance was often not provided to persons shot or injured during such incidents, in which a number of refugees were killed. The commander of the garrison in one locality beat a refugee who had spoken with the representatives of an international non-governmental organization. It has also been alleged that a number of local officials prevented refugees who had arrived in their towns from leaving for 25 or more days at a time.

51. The Minister for Refugee and Repatriates Affairs of Afghanistan informed the Special Rapporteur that the budget of his Ministry was insufficient for the integration of returning refugees and that international assistance was therefore required.

52. The Special Rapporteur has already indicated in his previous reports that the problem of mines is decisive with regard to the willingness of Afghan refugees to return to their country. It is also the reason why a number of repatriates have left their homes for the second time. According to the weekly update on humanitarian assistance for Afghanistan issued in mid-September 1993, 16 mine survey teams, 32 mine clearance teams, 27 mine detection dog teams and 9 mine awareness teams were working in 13 provinces in Afghanistan under mine clearance programme of the Office for the Coordination of Humanitarian Assistance to Afghanistan. The Government of Austria made a cash contribution of \$180,000, with which 71 mine detectors were purchased.

53. Mine-blast injuries in Afghanistan continue to be very numerous. The Special Rapporteur was informed that some 1 million persons had lost limbs during the past 14 years, approximately 300,000 of whom had lost both limbs. Their number increased significantly after the massive repatriation of Afghan refugees in 1992. In his statement before the General Assembly at its forty-eighth session, the Minister for Foreign Affairs of Afghanistan indicated that approximately 300 persons fall victim to land-mines each month (A/48/PV.24). For example, 217 casualties were treated at Herat between 1 and 19 August 1993 at the clinic of the Organization for Mine Clearance and Rehabilitation. The First Deputy Prime Minister of Afghanistan informed the Special Rapporteur that the maps of minefields which the authorities of the Union of Soviet Socialist Republics had submitted to the former Afghan Government had been destroyed during the fighting in Kabul. The destruction of those maps, which the Special Rapporteur had been able to see during one of his earlier visits to the country, will considerably hamper the process of mine clearing.

IV. CIVIL AND POLITICAL RIGHTS

A. Legal and factual framework

54. The present situation of human rights in Afghanistan can only be understood in the context of the broader political situation in that country. Needless to say, respect for human rights requires a stable government, the rule of law, an effective judicial system and the willingness to respect the fundamental principles of international human rights and humanitarian law. The Islamabad and Jalalabad accords contain a number of fundamental political principles which could have a bearing on the respect for human rights, but they are either not respected or have not been implemented.

55. Kabul, the capital, symbolizes the country's sovereignty and is a reflection of the welfare of the Afghan people in the eyes of the world. If the Government cannot guarantee the enjoyment of human rights even in the capital, then guaranteeing the enjoyment of human rights in the provinces is exclusively in the hands of provincial governors, regional rulers or local commanders who can choose whether or not to respect them, as they are not accountable to a central government. The Special Rapporteur wishes to emphasize that there is at present no Constitution in Afghanistan. However, persons who hold public office may choose to respect the human rights principles enshrined in the Koran. The Special Rapporteur will examine in greater detail in the following section the enjoyment of a number of fundamental human rights.

B. Right to life and deliberate killing

56. The inherent right to life enshrined in the International Covenant on Civil and Political Rights and in the Geneva Conventions of 1949, to which Afghanistan is a party, has hardly been respected during the war. At present, the enjoyment of the right to life is closely linked to the security situation. The unrest in the country and the power struggle being waged by non-democratic means are constant threats to the right to life. So far, political differences have often been settled through the use of weapons. It is also difficult to guarantee the right to life in terms of food, especially in Kabul, since the city has occasionally been subjected to economic blockades. In addition, large segments of the population, in particular children, elderly persons and women, including widows, have been left with no means of livelihood.

57. The greatest loss of life has been caused by rocket attacks, which are the aftermath of political quarrels. Air attacks with cluster bombs have also been reported. The number of persons killed in this manner in Kabul alone since April 1992 is estimated at more than 10,000. The antagonism between different political parties, their armed factions or other armed groups has occasionally resulted in massive indiscriminate killing. Tens of persons were killed in December 1992 and some 300 were taken prisoner; 33 persons died in the first two weeks of January 1993; 22 to 24 persons were killed on 9 March while approximately 100, among them many women and children, were killed in late March. In April, 7 persons were killed, some in hospitals which were shelled deliberately. More than 1,000 persons are thought to have been killed in nine days in May, while 3,200 to 4,500 were believed to be wounded. It was reported that 370 persons fled from Kabul to Pakistan between 8 and 14 May. Some 8

persons were killed in July and 17 in August. In September, 23 civilians were killed in the eastern part of Kabul in clashes between rival groups belonging to the Hezbe Wahadat and Ittehad Islami political parties. Persons are killed by rocket fire in Kabul every week.

58. In February 1993 between 200 and 300 persons are said to have been killed during a massacre in the Afshar neighbourhood of Kabul, which was inhabited predominantly by members of the Shia religious community. It was reportedly caused by the animosity between Hezbe Wahadat and Ittehad Islami, and was a response to a previous similar incident between them. When the Ittehad Islami forces, assisted by the Shurae Nazar group, launched air and ground attacks and subsequently took over the neighbourhood previously held by Hezbe Wahadat, indiscriminate killing, rape, torture and looting took place. Some persons were reportedly dismembered while 15 were hanged on trees and electricity pylons in front of their families. Looting also took place in the Chendawol neighbourhood. It should be stated, nevertheless, that all Afghans, regardless of their ethnic background, were subjected to atrocities during the fighting.

59. Armed clashes have also erupted occasionally in the provinces. Some 50 persons are believed to have been killed in Farah Province in December 1992 in clashes opposing armed groups belonging to Hezbe Wahadat and Harakat Inqilab. In Kandahar Province, 85 persons were reportedly killed in 3 days in mid-April 1993. Huge losses of life were reported in May in the Kapisa Province. In Khost Province, 10 persons were killed and 20 wounded in early July while 21 persons were killed in Nangarhar Province during the same month. In August, 250 persons are believed to have been killed in Kandahar Province. Fighting in Helmand Province has also been reported. In addition, more than 80 persons were killed at Jalalabad in September in conjunction with the assassination of the Deputy Governor of Nangarhar Province. Massive loss of life was also reported as a result of the power struggle in Nangarhar Province in October (see para. 31 above).

60. The Special Rapporteur was informed about the application of the death penalty in Afghanistan. After a number of public executions in 1992, no information was received concerning widespread application of the death penalty. Two persons were reportedly beheaded in Kunduz Province in June and one woman was stoned in the same province on charges of adultery. During his visit to Kabul, the Special Rapporteur questioned representatives of the judiciary on the public hanging which took place in that city in 1992. A judge responded that the governmental structure had not yet been in place at that time but that several judges who were trusted by the Islamic Government were already working. During his meeting with the Special Rapporteur, the President of Afghanistan stated that the four persons who were executed had killed approximately 20 people, including women and children, and that such a sentence was passed in order to prevent the killing of others. He added that the public hanging was an exceptional measure intended to serve as a deterrent and indicated that the incidence of similar crimes had decreased after the execution.

61. The judges of the Supreme Court explained to the Special Rapporteur that only judges appointed by the President would be authorized to pass judgements which entailed the death penalty. Persons sentenced to death can appeal against the judgement at five levels and a panel of judges takes the decision at each level. The decisions have to be unanimous. If the Supreme Court approves the

judgement, the defendant can appeal to the President, who alone can sign execution orders, and who may not take a decision which is not in conformity with the Shariah. President Rabbani told the Special Rapporteur that to kill a person is against humanity while to prevent a killing is a good cause.

62. The Special Rapporteur was informed that there have been no massive and systematic acts of revenge against high-ranking officials of the former Government. Only individual acts of revenge on a personal basis have been reported. The Special Rapporteur received first-hand testimony from an individual who had received a letter with a death threat and who was subsequently the target of an attempted assassination.

63. However, the Special Rapporteur would like to quote the following excerpt from the Amnesty International report "Afghanistan: Political Crisis and the Refugees" published in September 1993 (AI INDEX: ASA 11/01/93):

"According to reports, in Ghazni Province alone dozens of former members of the Watan Party (Homeland Party) of the former government have been extrajudicially executed since April 1992 by the province's governor, Qari Baba, who is affiliated to Moulavi Nabi Mohammadi's Harakat-e Inqilab Islami (Movement for Islamic Revolution). Some 14 members of the Parcham faction of the Watan Party were reportedly executed in July 1993 by Qari Baba's armed guards.

"Another report relates to the trial by an Islamic court and subsequent execution of an unspecified number of Khalqi faction members of the Watan Party in Helmand Province, which is controlled by Moulavi Akhondzada, believed to be also affiliated to Harakat-e Inqilab Islami of Moulavi Nabi Mohammadi.

"Recent Afghan refugees have reported seeing people arbitrarily arrested by armed guards and tortured in the street, on suspicion of being sympathetic to the former regime. According to one of these reports, armed guards arrested a former civil servant named Azad in a Kabul street in late 1992 or early 1993 and tied his hands and legs together with a rope. They told the crowd that the man would be sent as a gift to Herat's governor, Commander Ismail Khan, explaining that the governor had a personal feud with the man and would be pleased to see him."

64. In September 1993 the Special Rapporteur visited a mass grave which was discovered near Herat in 1992 and is not the only one in the country. It is believed to date to 1978-1979 when revolts against the communist Government and its reforms took place at Herat. The grave is situated in a valley surrounded by hills a few kilometres from the city and was discovered on the basis of information provided by a person who was a shepherd at the time and had noticed a lot of bulldozer activity in the area. Of the numerous skeletons discovered, only 15 to 20 have been identified by relatives who were able to recognize watches or pieces of jewellery and clothing. The bones and skulls are exposed in 14 locations which have been covered with glass, within the fenced area of the mass grave. The Special Rapporteur was able to observe bullet holes in many skulls, some of which were blindfolded. A mass grave which the Special Rapporteur was not able to visit was discovered in the vicinity of Pol-i-Charkhi prison near Kabul.

C. Personal liberty and the administration of justice

65. In his previous reports, the Special Rapporteur has always emphasized the importance of respect for the right to liberty of person in particular with regard to police and judicial investigation or during imprisonment.

66. In his last report to the Commission on Human Rights, the Special Rapporteur wrote about his visit to the Russian Federation and his meetings with the competent authorities, at their invitation, when they expressed their concern with regard to the fate of former Soviet prisoners (see E/CN.4/1993/42, para. 34). In Kabul the Special Rapporteur once again raised the question of those prisoners with the representatives of the Government of Afghanistan. The First Deputy Prime Minister said that a Russian delegation, visiting Afghanistan at the same time as the Special Rapporteur, would be allowed to see a number of Soviet prisoners on 17 September 1993. The Special Rapporteur was also informed that negotiations were in progress concerning the release of a number of prisoners, three of whom are reported to have been released on 18 September.

67. It should be noted that numerous Afghans are believed to be detained in the prisons of the former Union of Soviet Socialist Republics. During his visit to Moscow in January 1993, the Special Rapporteur was informed by the authorities that 26 Afghans were detained in prisons in the Commonwealth of Independent States, all for criminal offences.

68. During his recent visit to the area, the Special Rapporteur was informed by a reliable source that 80 former Soviet prisoners were still alive in Afghanistan. In Moscow, the Special Rapporteur was given a list of 297 persons said to be missing in action. He was informed in September 1993 that 235 persons were officially recorded in the Russian Federation as missing. It has been reported that four former Soviet prisoners were released when the Islamic revolution took place in April 1992, and that three were released in March 1993 by Jamiat Islami. General Dostom is reported to have released one former Soviet prisoner, while Hezbe Islami (Hekmatyar) is said to have released three who had been detained in the area of the Salang pass, at the time of the Special Rapporteur's visit to the region.

69. It is the opinion of the Special Rapporteur that an individual is always in the most vulnerable position while in detention during the period of investigation. He agrees with the Afghan Director for National Security that every political system has a different approach to security. The Director informed him that relative security prevails in those parts of the country which are under the control of the Government and that there were no secret detention centres and no political prisoners in areas it controls. Persons who committed acts of terrorism would be arrested, placed under investigation and duly prosecuted. The Director was unable to inform him of the number of prisoners, under investigation or otherwise detained, in Kabul or in the provinces. The Special Rapporteur was informed that there were only two governmental detention centres: one in the Sedarat Directorate and the other in a building belonging to the Directorate of National Security.

70. However, the Director for National Security agreed with the Special Rapporteur that political parties and different groups held their own prisoners in areas under their control, mostly at undisclosed locations. The Minister was

unable to provide the Special Rapporteur with the number of prisoners, believed to be in the hundreds, detained in jails belonging to the parties. The Special Rapporteur was informed that Hezbe Wahadat, Ittehad Islami, Hezbe Islami (Hekmatyar) and Hezbe Islami (Khalis) had prisons, as had Shuraa Nazar, and that those detention centres were not located on Pakistani soil. The International Committee of the Red Cross has made attempts to visit such detention centres. The Special Rapporteur has expressed the opinion that the existence of private prisons is incompatible with an effective government and that they must be abolished.

71. Concerning the use of torture during investigation, the Director informed the Special Rapporteur that Islamic rules and regulations did not allow it and that a confession extracted under pressure would be discarded by a judge. Confessions were only valid when made in front of a judge, without the presence of the police or the attorney. There were numerous reports, however, that ill-treatment and torture were used to extract confessions in prisons belonging to the different political parties. The Special Rapporteur has been unable to verify those allegations.

72. The Special Rapporteur was informed about the administration of justice in the areas where the Kabul Government exercises its control. A number of laws which were in force under the previous Government have been maintained if they were compatible with the Shariah and the principles of an Islamic government. This is also the case with a number of administrative rules and regulations, although a commission has been set up to establish new guidelines. Former rules also apply for the greater part with regard to criminal law. The Penal Code promulgated in 1976 is still in force, as it was considered compatible with Islamic law, as are the penal procedures established in 1964. At present, as there is no Constitution, part of the investigation procedure is carried out by the police, while other parts fall under the competence of the Attorney-General's office.

73. The Supreme Court has an Advisory Board which is competent to determine, inter alia, the compatibility of the former legislation with the principles of the Shariah. There is also an advisory board of the criminal branch of the Supreme Court. Each district has a primary court and there are courts at the level of the provinces, as well as seven High Courts in Kabul. Special courts for political crimes which existed under the former Government have been abolished. The judges of the Supreme Court with whom the Special Rapporteur met indicated that the judicial system was functioning during the current transitional period. The Special Rapporteur has the impression, however, that the link of the central judiciary with the legal system in the provinces is quite rudimentary and that the administration of justice is organized locally. This impression was later confirmed by the Governor of Herat Province. At the time of the Special Rapporteur's visit to the country, the Minister of Justice had not yet taken office.

D. Freedom of expression

74. The right to the freedom of expression should be viewed in conjunction with the freedom to seek, receive and impart information. The enjoyment of these rights requires a certain amount of literacy among the population and the

existence of mass media. The Special Rapporteur has the impression that foreign journalists have free access to most of the country, despite the limitations on freedom of movement imposed by curfews, certain emergency measures and the existence of numerous checkpoints within the cities and on roads. Foreign journalists are able to report about Afghanistan quite openly. As for freedom of opinion and information, it would appear that parties control a number of media such as newspapers and television stations through which they express their views. As the Government in Kabul is dominated principally by the party of the President, it has a television and radio channel. The second television station in Kabul is controlled by the party of the Prime Minister, while the provinces have their own television stations. Persons who have access to satellite transmission are able to receive a wide spectrum of information from abroad. It should also be noted that the creation of non-Islamic political parties was declared illegal in June 1992.

E. Other human rights issues, including the rights of women

75. The human rights problems in Afghanistan are greatest in Kabul, as confirmed by all the high-ranking government officials met by the Special Rapporteur. Although the takeover of the city by mujahideen forces in April 1992 and the transition to an Islamic government began quite smoothly, rivalry between different groups and the ensuing power struggle have resulted in armed conflict. This is not the place to analyse the reasons behind the power struggle, but it has one important element that ought to be mentioned, namely that all those involved in it are heavily armed, both individuals and forces with political party affiliations.

76. All types of weapons may be found in Afghanistan, ranging from light and heavy artillery, rockets and missiles to airplanes. They come from the stocks of the former Afghan army or were delivered to the former opposition groups by their allies during the foreign occupation. In his book The Bear Trap, Mr. Mohammad Yousaf provides an impressive account of such arms deliveries. The former Afghan army also received weapons from the Soviet army when it withdrew from Afghanistan in 1989. During his recent visit to Kabul, the Special Rapporteur was able to observe on the streets how heavily armed the persons at the checkpoints were. Weapons are a means to exercise political pressure, and in private hands they are a means of enforcing private demands, in addition to being used for self-defence.

77. In a number of provinces such as Herat, weapons were reportedly given to the former militia forces. Some provincial governors, for instance those of Herat and Balkh provinces, have been able to carry out a certain degree of disarmament since the breakdown of the former Government, among both individuals and armed groups. The Governor of Herat has reportedly also been able to implement some disarmament in the Badghis and Faryab provinces. As there is no army, the allegiances are to individuals. The Special Rapporteur was able to observe that people do not carry weapons openly in the streets of Herat and Mazar-i-Sharif. That had also been the case in Nangarhar Province before the recent tensions.

78. Use of arms has caused massive destruction in Kabul. The Special Rapporteur has been visiting the city since 1987 and can compare the present

situation with that of two years ago. Perhaps two or three neighbourhoods have been left more or less intact; the others have sustained heavy damage or are completely destroyed and deserted. In September 1993, the mayor of Kabul informed the Special Rapporteur that, since the Islamic Government came to power in 1992, some 36,000 houses have been partly or fully destroyed and more than 30,000 damaged and that approximately 15,000 families were still living in schools and other public buildings throughout the city. Although no precise statistics were available, it is estimated that 110,000 families have been displaced within Kabul, only 25,000 of whom were able to receive assistance.

79. Although university life has already begun at Jalalabad, the Dean of the Law Faculty of the University of Kabul informed the Special Rapporteur that those faculties which have resumed classes in Kabul have had to do so outside the university premises. Other students were dispersed throughout the city and mostly had to sit on the floor because the chairs had been destroyed or looted. She also indicated that some 150 university professors had fled the city because of the fighting and gone to Pakistan, which made teaching and research very difficult.

80. During his visit to Kabul in September 1993, the Special Rapporteur was able to visit the area of the University, which was subjected to heavy rocket fire, so that many parts have been completely destroyed. He visited in particular the main building of the Medical Faculty, which has been devastated. Furniture, including the seats in the auditorium, and even washbasins have been either looted or destroyed. What remained of books and documents was scattered all over the floors. Not a single window remained unbroken and the walls were black and burned.

81. The Special Rapporteur also visited other areas in Kabul, including the western and southern parts of the city, where no building remains undamaged. He drove through Maiwand Avenue, whose concrete buildings have been so heavily damaged that they recall the cities of Europe after the bombardments of the Second World War.

82. It is evident that such a situation is not propitious for the full enjoyment of human rights. Numerous witnesses, including refugees and displaced persons, who testified before the Special Rapporteur spoke in considerable detail of incessant looting, rape of women, ill-treatment and killing, even of children. By contrast, a number of provincial capitals, such as Mazar-i-Sharif, Jalalabad and Herat, which suffered a great deal during the war have been much calmer during the transitional period. Since the demise of the former Government, fundamental human rights have been respected in those relatively safe cities to a much greater extent than in Kabul.

83. The Special Rapporteur has endeavoured to gain accurate insight into the status of women in contemporary Afghan society. He met the representatives of the Afghan Women's Association and the Dean of the Law Faculty of the University of Kabul, who is a woman. He also met representatives of humanitarian organizations and private individuals who had first-hand information about the situation of women. In Peshawar, the Special Rapporteur spoke to a number of refugee women, including widows living in particularly hard conditions in the refugee settlement at Hayatabad. He also raised the issue of the status of women during talks with high-ranking government officials.

84. On 22 June 1993, the former Minister for Foreign Affairs of Afghanistan, Suleiman Gailani, stated at the World Conference on Human Rights at Vienna that the Government was making extensive efforts to enable Afghan women to enjoy their rights and creating better opportunities for them. The Government hoped that the existing problems concerning women's rights would be gradually solved and that favourable conditions would be created for their effective participation in the political, economic and social life of the society.

85. During his meeting with the Special Rapporteur in September 1993, the First Deputy Prime Minister of Afghanistan, Qutbuddin Hilal, stated that women enjoyed numerous rights under Islam. He indicated however that it would be difficult for women to participate in elections, in view of the low rate of literacy among them.

86. With regard to education, the representative of the Council of Nangarhar Province informed the Special Rapporteur that 26,000 female students were studying in educational institutions at all levels, while 42 seats at the University of Jalalabad were allocated especially for female students. The staff member from the Centre for Human Rights of the Secretariat who accompanied the Special Rapporteur during his mission to the area was invited to visit a school for girls, and to meet with women, in particular with widows.

87. The Jalalabad Accord concluded on 19 May 1993 stipulates that "the shariah veil shall be strictly observed". In his report to the Commission on Human Rights (E/CN.4/1993/42, para. 32), the Special Rapporteur indicated that no women reporters were allowed on Afghan television. He was subsequently informed that women were authorized to appear on the government-run television station in April 1993. During his visit to Afghanistan in September 1993, the Special Rapporteur was able to observe women presenting the evening news.

88. Representatives of the Afghan Women's Association informed the Special Rapporteur about the organization and activities of the Association, which used to have productive activities, such as carpet weaving, sewing, knitting and the fabrication of handicrafts. Its educational activities included Islamic and language courses, and courses intended to raise the consciousness of women. The Special Rapporteur was informed that most of those activities had come to a halt as a result of destruction and looting of the machines, cassettes and other material perpetrated by armed members of the government militia and other mujahideen factions during the transitional period.

89. The situation of women in Afghanistan also has a dark side which was manifested during the recent period of unrest, particularly in Kabul. The Special Rapporteur was informed of numerous cases of rape; he was also given the names of several women and girls who chose to commit suicide to avoid being raped, and told of the circumstances in which they died. The systematic practice of rape in Kabul in 1992 and 1993 prompted a prominent Afghan lady to state that women had never been dishonoured in this way in Afghanistan before. The Special Rapporteur was informed about atrocities such as the massive rape and abduction of women during the fighting in the Afshar and other neighbourhoods of Kabul in February 1993, the reported offer for sale of some 80 women held captive by an armed group affiliated to a particular party and the systematic rape of women and girls in a mental asylum. A woman was forced by armed men to give birth in a vehicle on the street. It appears that none of the

persons who committed such acts have been prosecuted by the competent judicial authorities.

90. The Special Rapporteur was told that women in Afghanistan were not well served by their present political rights, and that women in the provinces were probably in a better situation from the standpoint of security than in Kabul but were less aware of their overall position in society.

91. The problem of narcotics has reached unprecedented proportions as Afghanistan has become one of the largest producers of raw material in the world. Local farmers grow poppies for the production of narcotics and will continue to do so until they are able to ensure sufficient income from substitution crops. The United Nations humanitarian assistance provided to Afghanistan includes a drug control and rehabilitation programme, which organizes training courses for members of non-governmental organizations in the field and drug awareness events, and is currently active in the country's southern provinces.

V. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

92. The Special Rapporteur described the situation regarding the enjoyment of economic, social and cultural rights in Afghanistan in his report to the Commission on Human Rights (E/CN.4/1993/42). It has also been described in the consolidated appeal by the Secretary-General for emergency humanitarian assistance for Afghanistan, of January 1993, and in the weekly reports on humanitarian assistance for Afghanistan, which give "a hope amongst ruins". However impressive it may be, the assistance is not commensurate with the evident needs of the country and its people. The activities of non-governmental organizations, such as Afghanistan Hilfe und Entwicklungsdienst der Stadt Hamburg, which provide direct assistance in the field and are coordinated by the Agency Coordinating Body for Afghan Relief are also not sufficient.

93. The Special Rapporteur has already referred to the distressing situation of the University of Kabul, whose premises have sustained heavy damage. Numerous educational institutions still house displaced persons from those parts of the city which have been destroyed. The only classes being held are those of the fifth year of medical school, on the premises of the Military Medical Academy Hospital. The fighting in Kabul has also entailed the damage or destruction of numerous cultural monuments. The Special Rapporteur has been unable to ascertain whether the National Museum, located in the Darul Aman neighbourhood of the city, has been damaged and its treasures looted.

94. The Afghan Peace Accord stipulates that an all-party committee shall be constituted to supervise control over the monetary system and currency regulations, to keep them in conformity with existing Afghan banking laws and regulations. However, the Division of Powers annexed to the Accord stipulates that the President is empowered to grant formal permission to print money. Prime Minister Hekmatyar is reported to have stated that the Afghan currency continues to be printed in the Russian Federation and is received by the President, who then distributes it among the parties that are members of the coalition Government and to the Municipality of Kabul. The Special Rapporteur

is not acquainted with the specific rules governing the distribution of money, but he was told that it is influenced by the overall strength of a given party.

95. During the first months of 1993, outbreaks of cholera were registered in several parts of Afghanistan. In September 1993, the Minister of Health informed the Special Rapporteur that the disease was largely under control, thanks mainly to the assistance provided by the United Nations. The Special Rapporteur's attention has also been drawn to an incident in which a number of children are alleged to have poisoned the water in a Kabul neighbourhood as a voluntary act of terrorism. Accusations were made in connection with the rivalry between two political parties, one of which was reported to have held the children in detention. The Special Rapporteur was informed by one of the parties involved in the dispute that an investigation was conducted by a joint commission composed of members of both concerned parties to which the children were reportedly handed over.

VI. SELF-DETERMINATION

96. There are several modes of exercising the right to self-determination, all of which must be based on the freely expressed will of the people. The war waged by the Afghan people against foreign domination, which was qualified as a jihad (holy war), and its refusal to be ruled by a government described as being of "infidels", are expressions of self-determination. The decision of millions of Afghans to leave their country and become refugees, and the decision of numerous persons to return also constitute a mode of self-determination.

97. The next step in the realization of the right to self-determination enshrined in the Human Rights Covenants to which Afghanistan is a party, and respect for which has been pledged by its governmental representatives in United Nations forums, is the decision to establish a government which represents all segments of the Afghan population. In this connection, the Special Rapporteur wishes to refer to General Assembly resolution 46/137 of 17 December 1991, in which the Assembly upheld the principle of periodic and genuine elections. The United Nations provides assistance in this area which goes beyond mere observation and has already assisted the election process in numerous countries.

98. For the holding of general elections, there must be security in the country and respect for human rights must be guaranteed and universal. Refugees and displaced persons should be able to return to their homes. These are some of the basic conditions which have to be met if elections are to be a means of exercising the right to self-determination and of legitimizing a given government. The Islamabad and Jalalabad accords could pave the way for a mobilization of the political will of the population.

99. The Afghan Peace Accord signed at Islamabad contains an agreement regarding an electoral process, to be implemented within the period of 18 months starting on 29 December 1992. An independent Election Commission would be formed to hold elections for a Grand Constituent Assembly. The Assembly would formulate a Constitution under which general elections for the President and Parliament would be held within that 18-month period (see S/25435).

100. The Jalalabad Accord provided for the creation of a Supreme Council consisting of "Jehadi leaders, commanders, wise and sincere personalities", mandated to oversee the work of the 20-member Election Commission, into which each party would be able to introduce one person, the other members being designated by two thirds and majority votes. The Commission's Charter stipulated that it should submit its method of election by 22 June 1993 for final approval by the Supreme Council, and complete its work by presenting the elected representatives in Kabul by 22 October 1993.

101. A 45-member election commission headed by Maulavi Mohammad Nabi Mohammadi was set up but failed to achieve any results, mainly, it appears, because no agreement could be reached on whether to hold direct or indirect elections. Until such a decision is taken, the process of democratization in Afghanistan will not advance. The power vacuum in the capital, characterized by quarrels between heavily armed groups, will continue. It should be noted, however, that the Government of Afghanistan invited the United Nations to supervise elections and to provide financial assistance for the same in a letter dated 14 July 1993. The Joint Commission which was to monitor the cease-fire and cessation of hostilities also has achieved nothing. Political differences continue to be settled by non-democratic means.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

102. After the holding of the Shura-Ahl-e-Hal Wa Aqd (see paras. 17-18 above), the Special Rapporteur expressed doubts whether the circumstances in which it was held, the participation and the decisions taken would be accepted as a valid basis for normal and peaceful political development in Afghanistan. Indeed, the power struggle continued after the shura, which prompted the convening of a gathering of the political parties initiated by the leaders of Saudi Arabia and Pakistan and attended by a representative of the Islamic Republic of Iran, to discuss and adopt guidelines for a political solution. All party leaders with whom the Special Rapporteur met during his last visit to the region agreed that it was necessary to find a solution to the power struggle. The Special Rapporteur has concluded that among the principal causes of dissent are differences of opinion concerning the approach to a political solution.

103. The political situation in Afghanistan is characterized by political agreements adopted by the coalition of leaders of nine former opposition parties. The Afghan Peace Accord concluded at Islamabad in March 1993 (see para. 21 above) provided for the formation of a Government for a period of 18 months in which Mr. Rabbani would remain President and Mr. Hekmatyar would assume the office of Prime Minister. Agreement was also reached on an electoral process and the formation of an independent Election Commission.

104. The Peace Accord also contained the text of the Division of Powers (see para. 22 above). The Cabinet established thereby would work on the principle of collective responsibility.

105. Under the Jalalabad Accord of May 1993 (see para. 23 above), it was decided, inter alia, to establish a Supreme Council which would provide guidance

concerning policy-making and whose aims would be to stop the war throughout Afghanistan, establish an Islamic army and form a cabinet "with the consent of the majority of the Jehadi leaders and approval of the President".

106. Having concluded the Islamabad and Jalalabad accords, which could represent a point of departure for the day-to-day functioning of a government, the country's political leaders are not in a position to implement them. The envisaged organs and commissions are not working and no time-frame concerning their programmes has been respected. On the contrary, the different political groups terrorize each other. For example, political enemies are the targets of mine or bomb explosions and differences concerning relatively minor issues may result in massive killing. In addition, the lives of certain members of private organizations which are independent from the Afghan political forces have been threatened.

107. Kabul is a decentralized area in which no government can really exercise power. Power is shared principally between groups loyal to President Rabbani and those loyal to Prime Minister Hekmatyar. The airport is currently controlled by forces over which the President has authority. Flights into and out of the capital and travel are possible only when there is a common understanding on the use of the airport.

108. There is no central power which exercises control over the provinces. Provinces are mostly governed by shuras which are often headed by prominent field commanders and do not reflect the composition or alliances of the so-called coalition in Kabul, as is the case in Nangarhar Province in the east. In the northern and western parts of the country, authority is exercised by persons whose authority extends beyond a single province and who have so far been able to guarantee law and order in their zones of influence. The infighting in Kabul may have repercussions in the provinces. The conflict can also be more or less specific to a given province, as was the case with the assassination in September 1993 of the Deputy Governor of Nangarhar Province which has given rise to general instability in the area. The current conflict in Kandahar Province does not follow the pattern of the alliances that have been formed elsewhere. (For more detailed information concerning local administrations set up by mujahideen commanders, see appendix 2 to the Amnesty International report of September 1993 entitled "Afghanistan: Political Crisis and the Refugees", AI INDEX: ASA 11/01/93.)

109. Kabul is governed by groups that are partners in the coalition and by those created along tribal and other lines. They control different sectors of the city, without any coordination, which accounts for a general lack of safety in the city. The Mayor's office is located in an area where a certain amount of governmental authority and infrastructure may be observed, but beyond that relatively small area control is exercised by armed groups, at times in a manner that can hardly be described as being in conformity with human rights standards.

110. The most badly damaged area in Kabul is that of the University with which the Special Rapporteur was well acquainted from earlier visits to the city. He was shocked to see houses, buildings, institutions and university premises and facilities either destroyed or heavily damaged and visibly looted.

111. In Kabul, some 36,000 houses have been partly or fully destroyed and more than 30,000 damaged. Approximately 110,000 families have been displaced and thousands of persons have been killed or wounded during the battles in and around the city. Numerous cases of rape and ill-treatment by armed persons have been reported. A reliable source told the Special Rapporteur that women have never been treated in Afghanistan with such a lack of respect as in recent months.

112. Contrary to expectations, the massive repatriation of refugees, which began after the breakdown of the former Government when more than 1.3 million persons returned from Pakistan alone, has not continued. In 1993, a relatively small number of refugees chose to return from Pakistan. The Pakistani authorities, who have continued to provide assistance to Afghan refugees in conjunction with UNHCR and a number of non-governmental organizations, have closed more than 120 administrative units within refugee camps, principally in the Baluchistan and North West Frontier provinces. An estimated 2 million refugees remain in Pakistan and approximately 2.15 million are still in the Islamic Republic of Iran. Written reports and oral testimony have been received concerning the harassment in northern Afghanistan of refugees returning from the Islamic Republic of Iran, especially from Khorasan Province.

113. More than 90,000 new refugees have arrived in Pakistan since April 1992. They are mostly unregistered refugees from urban areas who have not been placed in camps and do not receive any assistance. Most live in appalling conditions, some of them in squatters' camps with no facilities.

114. The Special Rapporteur was informed about the situation of members of the Afghan Sikh and Hindu communities who have fled Kabul. Numerous families from those communities were able to find shelter in India, but some faced administrative difficulties when crossing borders on the way, mostly through the North West Frontier and Baluchistan provinces. It would appear that many are now willing to return. Members of those communities who spoke with the Special Rapporteur told him that they did not leave Afghanistan because of racial hatred but owing to the insecurity caused by shelling and looting.

115. The continuous serious threat to the right to life has been characterized by massacres such as the one perpetrated in an area of Kabul controlled by members of the Afghan Shia community. The armed groups which participated in the massacre also raped women and girls and ill-treated children. All Afghans, regardless of their ethnic background, were subjected to atrocities. Despite the gravity of the offences, no thorough investigation into the matter has reportedly been undertaken.

116. A mass grave was discovered in 1992 near the city of Herat. Many of the dead were killed by shots in the head. It would appear that the killing dates back to 1978-1979 when the first uprising against the communist Government started in and around Herat. The Special Rapporteur was informed that this was not the only mass grave discovered in the country. He is of the opinion that the discovery of mass graves will help to elucidate the fate of persons who disappeared in Afghanistan in the late 1970s.

117. Death sentences continue to be pronounced and are reportedly carried out in conformity with the Shariah. The Special Rapporteur was informed that the death

sentences which were passed and carried out in public in 1992 were exceptional measures taken under specific circumstances and in view of the situation prevailing at the time.

118. The governmental authorities in Kabul have stated that there are no political prisoners in detention centres under their control. However, they have indicated that investigation procedures are conducted by the police, under the control of the Attorney-General, and are transferred to courts after the completion of the files. As regards torture, the Special Rapporteur was informed that the Islamic rules and regulations enshrined in the Koran forbid such practice.

119. It has been admitted that prisons controlled by political parties and other groups exist in Afghanistan. Not all parties have prisons. The Special Rapporteur was not able to obtain information concerning the number of prisoners detained in such prisons, their location or how they were treated. It would appear that they are often held as hostages. The International Committee of the Red Cross has tried to obtain permission to visit those prisoners. The Special Rapporteur is of the view that the existence of a central government would preclude the creation of prisons controlled by parties.

120. The fate of former Soviet prisoners has remained unresolved. Afghan groups which have such prisoners in their custody are reluctant to release them unconditionally. It would appear that they are considered an element for bargaining, which is unequivocally prohibited by humanitarian law. Negotiations concerning the release of a number of the prisoners coincided with the Special Rapporteur's visit to Afghanistan. However, peace in the country and the establishment of normal international relations warrant a final step such as the release of those prisoners, whose number is estimated at between 80 and 235. They should be allowed to decide where they want to go: remain in Afghanistan integrated into the Afghan society, go to a third country or return to their homes.

121. Fortunately, after the Islamic Government took office, there were no massive or systematic acts of revenge against persons who occupied prominent positions in the previous Government. However, individual acts of revenge have been reported.

122. As concerns the amnesty which was proclaimed after the establishment of an Islamic Government, it would appear that problems have arisen with regard to the interpretation of the general amnesty decree which was adopted unanimously under former President Mojjadidi and which principally concerns high-ranking officials of the former Government. As he has indicated in his reports to the General Assembly and the Commission on Human Rights, the Special Rapporteur is of the opinion that even former President Najibullah should be granted amnesty since the amnesty decree of the Government did not provide for any exceptions.

123. The Special Rapporteur was able to obtain specific information about education from persons who exercise authority in a number of provinces located in the western, northern and eastern parts of the country. The Special Rapporteur sees no possibility for the revival of university life in Kabul, especially in the scientific and technical fields which require fully equipped institutes and laboratories.

124. The situation of Afghan refugees in both Pakistan and the Islamic Republic of Iran has been regulated by agreements concluded between UNHCR, the Government of Afghanistan and the Governments of the Islamic Republic of Iran and Pakistan, which resulted in the establishment of Tripartite Commissions. Reference is made in the agreements to the human rights enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It has been reported, however, that Afghan refugees have recently been repatriated forcibly from the Islamic Republic of Iran, in particular from Khorasan Province. The Special Rapporteur received detailed testimony from reliable sources concerning this practice of expulsion.

125. The economic and social situation in Afghanistan is far from satisfactory. Basic commodities are not always available on the market and prices are high in comparison with the average income. A number of areas have been affected by epidemics of diseases such as cholera. Although the United Nations has made considerable efforts with regard to mine clearing, the process cannot advance rapidly for lack of funds and equipment.

126. It has been reported that the National Museum in Kabul has been partly destroyed and looted. The Special Rapporteur is aware that heavy fighting has taken place in the area where the museum is located but was unable to ascertain the veracity of the reports.

127. The Special Rapporteur has finally come to the conclusion that the situation of human rights in Afghanistan is far from being satisfactory. Owing to the absence of an effective central government, the existing authorities are unable to govern the provinces and not even all areas in Kabul are under their control. Only a democratic understanding between the representatives of the political parties can solve the conflict, which could escalate into a total war with repercussions for the security of the whole region. The conflict in neighbouring Tajikistan, for example, has spilled over into Afghanistan and created a new problem of Tajik refugees and internally displaced Afghans. The respect of the human rights enshrined in the Universal Declaration and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which Afghanistan is a party and which it has pledged to implement, is not guaranteed. This is also one of the reasons for the absence of a "pull factor" that would prompt Afghan refugees to return to their country. It would appear that the "push factors" which keep the refugees away continue to prevail, among them insecurity, unrest, mines and the problems which the international community faces in rendering assistance. The Afghan people have been overwhelmed by large amounts of sophisticated weapons, which were helpful in waging the war against foreign occupation but whose existence is disastrous for peace, if anyone can command a situation by use of weapons. The people are victims of a situation which, after the victory of the liberation struggle, has rendered the whole country helpless.

B. Recommendations

128. The Special Rapporteur wishes to reiterate the recommendations contained in his report to the General Assembly at its forty-seventh session (A/47/656), namely that humanitarian law must be respected scrupulously (para. 130); that the Government should issue a declaration on the basis of article 4 of the

International Covenant on Civil and Political Rights (para. 131); and that the International Committee of the Red Cross should be allowed to visit places of detention organized by combatants or governmental authorities wherever they may be (para. 133); he also reiterates his recommendations on the administration of justice (para. 134) and on non-discriminatory application of the amnesty decree (para. 140).

129. The Government of Afghanistan should implement the provisions of the Islamabad and Jalalabad accords, which provide for the establishment of an Election Commission and a Supreme Council mandated to draft the Constitution.

130. The United Nations should offer advisory services and technical assistance concerning the drafting of the constitution and holding direct elections or a Loya Jirga in keeping with Afghan tradition. The new Constitution should embody human rights principles which are in conformity with the Shariah and with those enshrined in United Nations instruments.

131. Since it is possible for the United Nations to provide advisory services and technical assistance only when there is peace, security and a functioning central government, the weapons currently in the possession of unauthorized organized armed groups should be handed over, under the supervision of the United Nations, and used for the creation of a central governmental army or destroyed.

132. The former Soviet prisoners of war should be released unconditionally, in conformity with the Geneva Conventions of August 1949. Since the amnesty decree of the Government did not provide for any exceptions, former President Najibullah should be granted amnesty. In view of his state of health, he should be released promptly on humanitarian grounds.

133. Prisons run by political parties should be abolished and their prisoners released or, if a case exists, given a fair trial. The International Committee of the Red Cross and the Special Rapporteur should be allowed to monitor the implementation of this recommendation.

134. Every effort should be made to broaden and accelerate the process of mine clearing.

135. Every effort should be made to enable displaced persons to return safely to their homes and to rebuild them.

136. Respect for women and their honour and dignity should be ensured in accordance with the provisions of international human rights instruments and the Geneva Conventions.

137. Political conflicts should be solved by peaceful and democratic means. The use of weapons to gain power or achieve political goals should be declared unlawful unanimously.

138. As the Special Rapporteur has been asked on several occasions to mobilize the United Nations to assist once again in reaching a political solution to the power struggle, he recommends the political organs of the United Nations at least to attempt to bring the conflicting groups to the negotiating table.

139. The Special Rapporteur appeals to the international community to continue its efforts in favour of mine clearing and provide financial and other contributions for that process, so that the reconstruction of the villages and cities in Afghanistan can advance and refugees may return to a safe environment.

140. The United Nations Educational, Scientific and Cultural Organization (UNESCO) should be invited to study the situation of the cultural heritage of the country, in particular that of the Kabul Museum. Efforts should be made to reconstruct the University of Kabul and revive the educational process.

141. In addition to continuing its humanitarian activities, the United Nations should continue to monitor the developments concerning the situation of human rights in Afghanistan.

142. The Special Rapporteur recommends that his report should also be translated into the Dari and Pashtu languages, which would help reflect the interest of the international community in the fate of Afghanistan so that the Afghan people and conflict are not forgotten.
